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No. 709

IN THE

Supreme Court of the United States

October Term, 1942

VIRGINIA ELECTRIC AND POWER COMPANY,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD.

On Petition for a Writ of Certiorari
To the United States Circuit Court of Appeals
For the Fourth Circuit

PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM

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Dated March 6, 1943.

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PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM

The Question

The Memorandum for the Board, filed in answer to the Petition dated February 3, 1943 for a writ of certiorari, joins "in requesting that a writ of certiorari issue to review that portion of the decision below which enforced the provision of the Board's order respecting reimbursement for dues checked off" (Memorandum, p. 6).*

The Board, however, asks that "the writ, if granted, be limited to" that question (*id.*, p. 7), so as to exclude the other question presented in the Petition, namely:

> "To the extent, if any, that may be pertinent to a review of [the above question], was there adequate evidence and basis in law to support the Board's finding of 'dominating and interfering with the formation and administration' of the I.O.E. and 'contributing support to it'?" (Petition, p. 3).

This reply is filed in opposition to that suggested limitation of the writ.

Argument

The quoted question is not uncertain. If it be the view of the Court that in no circumstances does the Board have power to order reimbursement of dues, there is no need to consider the facts. If, however, it be the view of the Court that the question whether the Board has such power depends on the facts of the particular case, then the quoted question asks this Court to consider all the facts in the record and

*While these words seem, and should be, absolute, other portions of the Memorandum indicate that they intend a review of that question only on the premise that all findings of the Board are supported by evidence.

in doing so to disregard, as unsupported by the evidence, all the adverse findings of the Board which would otherwise screen those facts from judicial scrutiny.* The scope of this question is in no way limited by the fact that the *relief* sought upon such disregard of Board findings is only a reversal of the decree below so far as it enforced the dues reimbursement order. Nor is the issue obscured by the fact that *further* relief which might be granted upon such disregard of Board findings (namely, a reversal of the decree below so far as it enforced the disestablishment order), is not requested, the validity of that requirement having become moot by the dissolution of the I.O.E.

Both questions being identified in the Petition, and the public concern being indicated, it was not necessary for the Petition to review the merits, still less to point out the respects in which the Board's findings are not supported by substantial evidence.

Surely the Board, taking, as it does, the view that the validity of the dues reimbursement order "depends upon the particular circumstances of this case" (Memorandum, p. 7), can not ask this Court to review the order on the Board's findings alone without regard to the evidence. Whatever may be the public importance of a ruling on the Board's power, that should be given in "a concrete situation with all its qualifying incidents," for "to know 'the justice of the particular case' . . ., one must know the case in its particulars" (*Lowden* v. *Northwestern National Bank & Trust Co.*, 1936, 298 U. S. 160, 165). This Court approaches generalizations only through an equitable determination of the rights of parties litigant at the bar.

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*Had there been any uncertainty in the original request, it is surely eliminated by this request for a universal consideration of the whole record and a universal disregard of all findings of the Board adverse to the Company or the I.O.E.

A writ of certiorari should be granted and should be without limitation so as to permit such an equitable disposition of the cause.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY

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